BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	CLK Properties LLC Dist. 20, Map 55M, Group B, Control Map 56P, Parcel 3.00, S.I. 000 Commercial Property Tax Year 2007	)) Franklin County)))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$775,900	$78,800	$854,700	$341,880

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on November 8, 2007 in Winchester, Tennessee. The taxpayer was represented by Dr. William Kuhar. The assessor of property, Phillip Hayes, represented himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an irregularly shaped 241' x 224.7' lot improved with a 4,986 square foot office building constructed in 1977. Subject property is located at 2006-2008 Decherd Blvd. in Decherd, Tennessee. Decherd Blvd., also known a U.S. Highway 41A, consists of a largely commercial strip connecting Decherd and Winchester.

The taxpayer contended that subject property should be valued at $450,000. In support of this position, the taxpayer argued that his April 13, 2006 purchase of subject property represents the best indication of subject property's market value as of January 1, 2007, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

The taxpayer maintained that three additional factors support a significant reduction in value. First, the taxpayer introduced into evidence a "Commercial Building and Lot Evaluation Report" prepared for the lender which estimated subject property's market value at $516,000 as of May 2, 2006.[1] Second, the taxpayer offered into evidence several sales which he asserted support a drastically lower value. Third, the taxpayer contended that the current appraisal of subject property does not achieve equalization as evidenced by the assessor's per acre appraisals of other tracts in the immediate area.

The assessor contended that subject property should be valued at $596,000. In support of this position, the testimony and written analysis of Billy Taylor, an appraiser with the Division of Property Assessments, was offered into evidence. Essentially, Mr. Taylor

[1] Dr. Kuhar testified that he believed the appraisal reflected an inflated value.

analyzed four vacant land sales which he concluded support a market value indication of $2,473 per front foot.[2]

Mr. Taylor also concluded in his analysis that the current use of subject site does not constitute the highest and best use. Consequently, he attributed no value to subject improvements. With respect to the issue of demolition costs, Mr. Taylor's analysis provided in relevant part as follows:

> . . . Annual economic rent of $42,000 does not support the indicated value for the site. Therefore, the improvements have no market value and the correct value for the subject would be the value of the site, minus the cost to remove improvements. We have not obtained estimates to remove current improvements. It's possible that they could be removed for the materials in the building.

With respect to the issue of equalization, Mr. Taylor disagreed with the taxpayer's assertion that his parcel had not been appraised consistently with other parcels along the highway. Mr. Taylor testified that parcels along Decherd Highway were appraised assuming a base land value of $2,000 per front foot. The base land value was then adjusted to account for factors such as a corner location, depth etc. Mr. Taylor maintained that the taxpayer's use of acreage as the relevant unit of comparison does not reflect how property along the highway is actually bought and sold.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at $2,100 per front foot or $506,100.

Since the taxpayer is appealing from the determination of the Franklin County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the taxpayer's April 13, 2006 purchase of subject property cannot be adopted as the basis of valuation. The administrative judge finds that one sale does not necessarily establish market value. As observed by the Arkansas Supreme Court in *Tuthill v. Arkansas County Equalization Board*, 797, S. W. 2d 439, 441 (Ark. 1990):

> Certainly, the current purchase price is an important criterion of market value, but it alone does not conclusively determine the

[2] Mr. Taylor assumed a "base" land value of $2,000 per front foot. Mr. Taylor then applied a depth factor of 1.03% and a 15% corner influence factor.

> market value. An unwary purchaser might pay more than market value for a piece of property, or a real bargain hunter might purchase a piece of property solely because he is getting it for less than market value, and one such isolated sale does not establish market value.

The administrative judge finds that subject property was not offered for sale on the open market when the taxpayer purchased it. According to Dr. Kuhar, the seller, Regions Bank, was liquidating the property and contacted him directly because he leased a portion of the property and had the second right of refusal.

The administrative judge finds that all commonly accepted definitions of market value presuppose the property has been offered for sale on the open market for a reasonable length of time. The administrative judge finds that this was obviously not the case in this particular instance. Moreover, as will be discussed below, the administrative judge finds that Mr. Taylor's comparable sales support a higher range of value for lots in the immediate area.

The administrative judge finds that the Commercial Building and Lot Evaluation Report cannot receive any weight for at least two reasons. First, the appraiser was not present to testify or undergo cross-examination. See *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

> The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .
>
> * * *
>
> . . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2. Second, it appears from Mr. Taylor's testimony that the appraiser's license does not qualify him to appraise this type of property.

The administrative judge finds that the various sales included in the taxpayer's exhibit cannot provide a basis of valuation. The administrative judge finds that sales were not analyzed in any meaningful manner. Moreover, some of the sales were located off the highway or subsequently subdivided. In addition, some of the data sheets do not even list the dimensions of the lots. Finally, the taxpayer was not personally familiar with some of the transactions as they were apparently given to him by a local realtor.

The administrative judge finds that the taxpayer's equalization argument must be rejected. The administrative judge finds that the State Board of Equalization has historically adhered to a market value standard when setting values for property tax purposes. See

Appeals of Laurel Hills Apartments, et al. (Davidson County, Tax Years 1981 and 1982, Final Decision and Order, April 10, 1984). Under this theory, an owner of property is entitled to "equalization" of its demonstrated market value by a ratio which reflects the overall level of appraisal in the jurisdiction for the tax year in controversy.[3] The State Board has repeatedly refused to accept the *appraised* values of purportedly comparable properties as sufficient proof of the *market* value of a property under appeal. For example, in *Stella L. Swope* (Davidson County, Tax Years 1993 and 1994), the Assessment Appeals Commission rejected such an argument reasoning as follows:

> The assessor's recorded values for other properties may suffer from errors just as Ms. Swope has alleged for her assessment, and therefore the recorded values cannot be assumed to prove market value.

Final Decision and Order at 2.

The administrative judge finds that Mr. Taylor's comparable sales were much more thoroughly analyzed and should initially receive greatest weight.[4] The administrative judge finds Mr. Taylor concluded that the sales support the following indications of value after adjustments:

Sale	Date of Sale	Indicated Value Per Front Foot
1	January 3, 2006	$2,044
2	June 2, 2006	$2,415
3	April 18, 2005	$2,542
4	July 21, 2004	$2,033

Respectfully, the administrative judge finds that Mr. Taylor's recommended value of $596,000 or $2,473 per front fact is higher than the indicated values for three of the four comparables. The administrative judge finds that subject property should be appraised at the lower end of the indicated range to account for demolition costs. Absent proof concerning demolition costs, the administrative judge finds it unreasonable to assume that the salvage value of the building materials will offset the demolition costs. The administrative judge finds that the preponderance of the evidence supports adoption of a value of $2,100 per front foot or $506,100. The administrative judge finds that $100 of the indicated value should be allocated to the improvements for the sole purpose of reflecting their existence on the property record card.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2007:

---

[3] See Tenn. Code Ann. §§ 67-5-1604-1606. Usually, in a year of reappraisal – whose very purpose is to appraise all properties in the taxing jurisdiction at their fair market values – the appraisal ratio is 1.0000 (100%). That is the situation here.

[4] For example, like the subject, the comparables are all corner lots located on Decherd Blvd. with C2 Zoning.

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$506,000	$100	$506,100	$202,440

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 16th day of November, 2007.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: CLK Properties LLC
Phillip Hayes, Assessor of Property